

## **CHAPTER 30.1-04 INTESTATE SUCCESSION**

### **30.1-04-01. (2-101) Intestate estate.**

1. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this title, except as modified by the decedent's will.
2. A decedent, by will, may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

**30.1-04-02. (2-102) Share of spouse.** The intestate share of a decedent's surviving spouse is:

1. The entire intestate estate if:
  - a. No descendant or parent of the decedent survives the decedent; or
  - b. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.
2. The first two hundred thousand dollars, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.
3. The first one hundred fifty thousand dollars, plus one-half of any balance of the intestate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent.
4. The first one hundred thousand dollars, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

**30.1-04-03. (2-103) Share of heirs other than surviving spouse.** Any part of the intestate estate not passing to the decedent's surviving spouse under section 30.1-04-02, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

1. To the decedent's descendants by representation.
2. If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent.
3. If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation.
4. If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the

descendant's taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

**30.1-04-03.1. Individuals related to decedent through two lines.** An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

**30.1-04-04. (2-104) Requirement that heir survive decedent for one hundred twenty hours.** An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under section 30.1-04-05.

**30.1-04-05. (2-105) No taker.** If there is no taker under the provisions of this title, the intestate estate passes to the state for the support of the common schools and an action for the recovery of such property and to reduce it into the possession of the state or for its sale and conveyance may be brought by the attorney general or by the state's attorney in the district court of the county in which the property is situated.

**30.1-04-06. Representation.** Repealed by S.L. 1995, ch. 322, § 26.

**30.1-04-07. (2-107) Kindred of half blood.** Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

**30.1-04-08. (2-108) Afterborn heirs.** An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

**30.1-04-09. (2-114) Meaning of child and related terms.** If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent.
2. Inheritance from and through a child by either natural parent or kindred is precluded unless that natural parent has openly treated the child as the parent's, and has not refused to support the child.
3. In cases not covered by subsections 1 and 2, an individual is the child of its natural parents regardless of the marital status of its parents. The parent and child relationship may be established under chapter 14-17.

**30.1-04-10. (2-109) Advancements.**

1. If an individual dies intestate as to all or a portion of the individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates

that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

2. For purposes of subsection 1, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.
3. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

**30.1-04-11. (2-110) Debts to decedent.** A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

**30.1-04-12. (2-111) Alienage.** No individual is disqualified to take as an heir because the individual or an individual through whom that individual claims is or has been an alien.

**30.1-04-13. (2-112) Dower and curtesy abolished.** The estates of dower and curtesy are abolished.